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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,544	02/07/2001	Andy Zupan	462	2538

7590

01/30/2002

Law Offices of John D. Gugliotta, PE., Esq.
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Akron, OH 44308

EXAMINER

PATEL, MITAL B

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 01/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/778,544

Applicant(s)

ZUPAN, ANDY

Examiner

Mital B. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

Please note that the transmittal letter states that an IDS was submitted along with copies of the IDS citations. However, there is no record of form PTO-1449 or any variation thereof in the application file.

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "69" has been used to designate both threaded shank and flexible tube. See page 9 of the specification. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. There is a lack of antecedent basis for the following limitations:

- Claim 1, line 7, "the top of said canister"

- Claim 1, line 11, "the top of said regulator"
- Claim 4, line 2, "said present invention"
- Claim 5, line 16, "the bottom"
- Claim 9, line 19, "the interior surface"
- Claim 9, page 19, line 2, "the exterior surface of said arm wrap"
- Claim 9, page 19, line 6, "said flap"
- Claim 9, page 19, line 6, "said exterior surface of said canister pouch"
- Claim 12, line 16, "the elongated centerline"
- Claim 12, line 17, "the elongated centerline"

Correction is required.

5. As set forth by claim 12, it is unclear as to what exactly is the elongated centerline of the canister.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-8, 16, and 17 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Warren (US 5042697) in view of Biddick et al (5855307).

8. **As to claim 1**, Warren teaches a portable, multipurpose, air dispensing apparatus comprising a small, portable canister of a linearly elongated, cylindrical,

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hollow configuration **190**; a regulator **20**, the regulator located on top of the canister, the regulator having a valve housing disposed with the regulator; an activation button **10**, **110**, the activation button located on top of the regulator; the activation button designed to be depressed, and with each depression, to release the equivalent of one breath into the mouth of the user; and a constant volume discharge valve **70**, the constant volume discharge valve located inside the valve housing of the regulator. Warren fails to specifically set forth a canister holding a combination of compressed oxygen and nitrogen. However, such a limitation is well within the scope of one of ordinary skill in the art given the intended use or intended therapy. It is noted that Warren fails to specifically teach the use of a mouthpiece to deliver oxygen, however it would have been obvious to one of ordinary skill in the respiratory field to modify the device of Warren to include a mouthpiece. It is also noted that Warren fails to teach the use of a canister securing means designed to releasably secure the canister to an appendage of a user. However, Biddick teaches the use of a canister securing means for securing an inhaler so that it can be conveniently carried by the user while exercising. Therefore, it would have been obvious to support the apparatus of Warren to a user by canister securing means, as set forth by Biddick, to allow for easy transport or carrying of the portable breathing apparatus while engaged in other activities.

9. **As to claim 2**, the amount of gas depends on the intended therapy and user and would be well within the scope of one of ordinary skill in the art.

10. **As to claim 3**, Warren teaches an apparatus wherein the regulator further comprises a constant volume discharge valve, the constant volume discharge valve

releasing a preset amount of air equivalent to one human breath, each time the activation button is depressed.

11. **As to claim 4**, Warren teaches an apparatus wherein the apparatus is configured and designed to be held and activated by one hand, with the thumb depressing the activation button.

12. **As to claim 5**, Warren teaches an apparatus wherein the regulator further comprises sealing means, the sealing means designed to ensure an airtight seal between the regulator and the canister. Warren fails to specifically teach a female inlet having female threads designed to be mate with male threads located on the top of the canister in order to make the canister detachable from the regulator. However, it would be obvious to one of ordinary skill in the art to make a regulator as recited for the purposes of detachability. Furthermore, such an engagement between two components is known in the art.

13. **As to claim 6**, Warren teaches an apparatus wherein the canister is designed to be replaced when depleted.

14. **As to claim 7**, the above combination teaches an apparatus wherein the canister, mouthpiece and regulator are sufficiently small so as to be portable, capable of easy grasping, holding and activation with one hand, and capable of being carried in a pocket.

15. **As to claim 8**, the specific size of the canister is strictly dependent upon the amount of compressed oxygen desired by the user and therefore carries no patentable weight.

16. **As to claim 16**, Warren teaches an apparatus wherein the mouthpiece and regulator are permanently affixed to the canister.

17. **As to claim 17**, Warren teaches an apparatus wherein the constant volume discharge valve comprises a shank for capturing a piston with the shank being received in the valve housing; wherein the piston has a supply and sealing seat member for engaging an annular seat; and a ball **77**, the ball engaging a hard seat for providing a pressure control means, the ball being biased in a closed position by internal pressure of the canister and a resilient spring, and the hard seat for preventing a sealing seat from being achieved (See Fig.1 and Fig.4).

18. Claims 9-13, and 15 as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Warren and Biddick as applied to claim 1 above, and further in view of Martinelli (5779122).

19. **As to claim 9**, Warren and Biddick teach an apparatus wherein the canister securing means further comprises an adjustable arm wrap **1 of Biddick**, of a generally rectangular configuration, the arm wrap being constructed of a strong, lightweight, elastic material, and designed to be wrapped around an appendage of the user; a non-slip surface, the non-slip surface located on an interior surface of the arm wrap, the arm wrap adapted to rest against the user's skin. However, the above combination fails to teach the use of a canister pouch wherein the canister pouch is located on an exterior surface of the arm wrap, and configured and sized so as to snugly hold the canister within itself through an opening in the canister pouch; and flap securement means which releasably secures a flap to an exterior surface of the canister pouch. Martinelli

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does teach the use of a pouch and flap securement means **38, 29** and a flap **34** for supporting a respiratory device. Therefore, it would have been obvious to replace the securement device of Biddick with the canister pouch of Martinelli to provide an enclosed support of the breathing device.

20. **As to claim 10**, the above combination teaches a flap securement means which is a hook and loop fastener.

21. **As to claim 11**, the use of a snap fastener is known in the fastener art and is an obvious mechanical expedient of the hook and loop type fastener.

22. **As to claim 12**, the above combination teaches an apparatus wherein when the canister is in the canister pouch and the canister pouch is secured to the user's arm, an elongated centerline of the canister is parallel to an elongated centerline of the arm, so as to facilitate easy grasping by the opposite arm when needed.

23. **As to claim 13**, depending on the size of the canister the pouch of Martinelli would not completely cover the canister.

24. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Warren, Biddick, and Martinelli as applied to claim 9 above, and further in view of Meldrum.

25. **As to claim 14**, Warren, Biddick, and Martinelli teach essentially all of the limitations except for wherein the arm wrap is constructed of neoprene. Meldrum teaches the use of neoprene for a securement device. Therefore, it would have been obvious to use the material for the arm wrap of the above combination because neoprene is considered to be lightweight and waterproof which would be desirable for an active user.

Allowable Subject Matter

26. Claims 18-20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6070577, US 5620664, US 5443186, US 5029730, US 5022565, US 4637439, US 4582054, US 4363424, US 3976067, US 3570714 and EP 0400493.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 703-306-5444. The examiner can normally be reached on Monday-Friday (8:00 - 4:30).

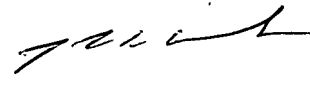
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4520 for regular communications and 703-306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

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mbp
January 24, 2002



John D. Meles
Patent Examiner
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28.

Attachment for PTO-948 (Rev. 03/01, or earlier)

6/18/01

The below text replaces the pre-printed text under the heading "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in ABANDONMENT of the application.